A TREATISE ON THE LAW OF AGENCY. By William Lawrence Clark and Henry H. Skyles. St. Paul: Keefe-Davidson Company, 1905. Two volumes, pp. liv, 2178.

This is the most exhaustive treatise for the use of the practitioner on the law of agency. It is published in two volumes for convenience in handling, not because of any natural division of the subject. The work has been well and thoroughly done, and the result is a treatise that must be of much value to the profession. It is so long since the appearance of Mr. Mechem's standard work on the subject that the appearance of such a book as the present volumes is very timely.

While it would be too much to say that Clark and Skyles is likely to become a classic, it is equally true that the work is far from mediocre. Every phase of the subject has been discussed with fullness and accuracy, the language is clear and concise, and distinctions are for the most part made without too much refinement and with discrimination. Needless refinements that have obtained currency in legal opinions of courts of last resort cannot be ignored by text-writers, however desirable it may seem to escape such useless discriminations and misleading names of things that exist chiefly in the judicial imagination. And yet one may hope for the disappearance of some of these under the influence of this practical age. Our authors, for example, like other writers on the subject, attempt to define *universal agents* that are "sometimes said to exist," adding "it is no doubt possible for such an agency to exist, but instances of it are very rare". Their quotation following this statement shows that there is much doubt whether such an agency can exist. It seems to require the principal to divest himself of all control over his own property after which it is difficult to see how he could ever again take it to himself. Almost equally fanciful is the distinction attempted between the authority of general and special agents. The authors truly say "the distinction is highly unsatisfactory." The fact is the act of the agent in general, binds the principal if it is in the scope of his authority, and does not bind him if it is not. Whether the agent be called general or special is of no consequence beyond this, and can give no aid in determining the principal's liability. As names for general, more general and less general authority the terms general, universal and special agents might be useful enough, but as applied to classes of agents subject to different legal rules they are misleading and without legal warrant. It is as difficult to determine when a special agent shades off into a general agent as to tell when a kitten becomes a cat, and more so, for one can be certain that a very young puss is a kitten, while he can never be sure any agent is special. Every definition of a special agent is ambiguous, and it may be doubted whether a special agent is really an agent at all. He seems rather to be a servant with very limited power.

Occasionally the authors are over nice when even the courts have not been. Of this their discussion of the definition of agency furnishes illustration. Notwithstanding their attempted distinctions it may be confidently affirmed that agency is a *contractual relation* always, resting on a contract or a quasi-contract. It exists only by consent of the parties, or by what the law regards as equivalent to such assent. It might be better to say that agency is "the legal relation founded upon the express or implied contract of the

parties or arising by operation of law," instead of "created by law," but in any case it is a contractual relation in its origin and in its purposes, and it would be well to say so unequivocally, explaining away rather than emphasizing apparent exceptions.

In general the recent cases have been cited, but occasionally statements are made in reliance on old cases, that should be modified in accordance with the manifest tendency of legal opinion. Not one late case is cited as authority for the rule that the agent's authority must be under seal if he is to execute for his principal a sealed instrument. Under the present attitude of the law it is believed the old rule, if upheld in form in many jurisdictions, is not in spirit. The modern tendency to relegate the necessity of a seal to acts of corporations and public officials should be noticed. In the notes cases are not uniformly arranged alphabetically by states as some recent writers urge they should be, but when the citations are extended they are often so arranged, and with advantage to the reader who wishes to know the weight of authority.

Few instances are noted in which disputed points are not stated in accord with the weight of authority, after a clear and intelligent attempt to make such explanations of apparent discrepancies as are not real ones. Sometimes, however, it may be doubted if correct conclusions have been drawn in such cases. In discussing the liability of banks taking paper for collection for defaults of correspondent banks, the text states that "the majority of courts" hold that the bank is not liable for such defaults of correspondents. It is believed the clear weight of authority is the other way. Nearly all the cases cited as making the majority were decided before the United States Supreme Court in *Exchange Bank* v. *Third Nat. Bank,* 112 U. S. 289, lent the weight of the federal courts to the rule that holds a collecting bank liable just as any other collecting agent is liable for defaults of correspondents. The effect of that decision and of the majority of decisions since, it is believed, is to establish the rule there laid down in the majority of the states. The text later expresses its own preference for this view, and other texts on agency have done the same.

The work covers not only the general principles of agency, but also at some length a treatment of special classes of agents, such as attorneys, brokers, factors, auctioneers, masters of vessels, etc. Of most of the books in any field it can be said they are but additions, good or bad, to the present books in that field. Of this it is not too much to say it is a real contribution to the subject.

EDWIN C. GODDARD.

A TREATISE ON THE LAW OF CRIMES. By Wm. L. Clark and Wm. L. Marshall; Second Edition, by Herschel B. Lazell. St. Paul: Keefe-Davidson Co., 1905. pp. xxxiv, 906.

The first edition of this work was in two volumes, and it is believed that the decision of the publishers to publish in one volume will meet the approval of the profession generally. The present edition is not otherwise materially changed from the first, except in being brought down to date. Mr. Clark